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$$\left. \begin{array}{l}) \\) \\) \\) \\) \\) \\) \\) \\) \end{array} \right\}$$

Plaintiff,

V.

ORDER

Defendants.

Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court liberally construes pro se complaints and may only dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678).

1 To determine whether the complaint is sufficient to state a claim, all allegations of material
2 fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit P'ship*
3 *v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). Although the standard under Rule
4 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than mere labels
5 and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation
6 of the elements of a cause of action is insufficient. *Id.* Finally, unless it is clear that the complaint's
7 deficiencies cannot be cured through amendment, a pro se plaintiff should be given leave to amend
8 the complaint with notice regarding its deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th
9 Cir. 1995).

10 Plaintiff's complaint was permitted to proceed with respect to her first and second causes of
11 action - sexual harassment - and she was given leave to amend with respect to her third, fourth, and
12 fifth causes of action - discrimination, intentional infliction of emotional distress ("IIED"), and
13 negligent infliction of emotional distress ("NIED"). (ECF No. 11). Plaintiff has since filed a first
14 amended complaint (ECF No. 15) and second amended complaint (ECF No. 20) and added a notice
15 of intent to further amend (ECF No. 24). Given that Plaintiff has already submitted a second
16 amended complaint and requests that the second amended complaint supersede the first amended
17 complaint, the Court will dismiss without prejudice her first amended complaint and proceed with
18 screening of her second amended complaint. Her second amended complaint adds two more claims
19 for slander and civil rights violations.

20 In general, Plaintiff's claims arise out of her residency at the Senior Garden Apartments
21 ("SGA"), located at 1813 E. Charleston Blvd., Las Vegas, Nevada. Plaintiff alleges that beginning
22 in January of 2016, she was subject to abusive and discriminatory conduct by Defendant Steven
23 Rameriz, building manager for SGA. Plaintiff also alleges that Russell Ricciardelli, owner of SGA,
24 was a party to this abuse. Plaintiff alleges the abuse continued throughout her residency at SGA, and
25 culminated with a notice of eviction, served on Plaintiff on July 12, 2017. Plaintiff alleges the
26 conduct of Defendant Rameriz included repeated grabbing of Plaintiff's body, demand for a kiss,
27 retaliation, and refusal by Defendant Ricciardelli to intervene when confronted with Plaintiff's
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1 complaints. Subsequently, she was subject to eviction proceedings during which Edward Kania was
2 the attorney representing Defendant Ricciardelli.

3 Again, Plaintiff's third cause of action alleging discrimination under the Fair Housing Act
4 appears to be duplicative of her first and second causes of action that were already permitted to
5 proceed. As a result, the Court will dismiss the third cause of action without prejudice. Plaintiff
6 may amend this cause of action if she believes that she can state a discriminatory housing practice
7 under 42 U.S.C. §§ 3604, 3605, 3606, or 3617, that is separate and distinct from her first and second
8 causes of action.

9 Plaintiff's fourth and fifth causes of action allege intentional and negligent emotional
10 distress. When a district court sits in diversity, or hears state law claims based on supplemental
11 jurisdiction, the court applies state substantive law to the state law claims. *Mason & Dixon*
12 *Intermodal, Inc. v. Lapmaster Int'l LLC*, 632 F.3d 1056, 1060 (9th Cir. 2011). As a result, the Court
13 will consider Plaintiff's emotional distress claims under the Court's supplementary jurisdiction. The
14 Court finds that Plaintiff has alleged sufficient facts to state a *prima facie* case to permit these claims
15 to proceed. She claims that she was so distressed by Defendants' extreme and outrageous conduct
16 that she had depression, thoughts of hopelessness, nightmares, night sweats, and physical
17 manifestations leading her to seek treatment from a homeopath. As such, considering the allegations
18 in the light most favorable to Plaintiff, the Court finds a sufficient basis for her IIED and NIED
19 claims.

20 Plaintiff's sixth cause of action alleges slander/defamation due to statements made regarding
21 Plaintiff in the eviction proceeding to two judges, which resulted in the grant of summary judgment.
22 Liberally construing Plaintiff's allegations, the Court cannot decipher sufficient factual allegations to
23 permit this claim to proceed. Plaintiff must show that there was "(1) a false and defamatory
24 statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to a third person,
25 (3) fault, amounting to at least negligence, and (4) actual or presumed damages." *Flowers v. Carville*,
26 266 F.Supp.2d 1245, 1251 (D.Nev. 2003) *quoting Pegasus v. Reno Newspapers*, 57 P.3d 82, 90
27 (Nev. 2002). Plaintiff has alleges that the statements made were false, and that those statements
28 caused her harm, but she has not established that a defendant was actually at fault or that the

1 statements were made to third parties. Plaintiff has therefore not properly pled a claim for
2 defamation.

3 Additionally, a claim for slander includes all the elements of defamation, but also requires “a
4 showing of special damages unless the defamatory statement is slanderous per se.” *Lambey v.*
5 *Nevada ex rel. Dept. of Health and Human Services*, 2008 WL 2704191 at *5 (D. Nev. 2008) citing
6 *Branda v. Sanford*, 637 P.2d 1223, 1225 (Nev.1981). “A statement is slanderous per se if it (1)
7 imputes commission of a crime; (2) injures the plaintiff’s trade, business, or office; (3) imputes
8 contraction of a loathsome disease; or (4) imputes unchastity in a woman.” *Id.* Plaintiff has not
9 sufficiently established that the statements were slanderous per se. As such, her sixth cause of action
10 will be dismissed with leave to amend.

11 Plaintiff’s seventh cause of action alleges a Section 1983 violation of her due process rights
12 and conspiracy to violate her equal protection rights against attorneys Defendants Kania, Newmark,
13 and Brown. Section 1983 creates a path for the private enforcement of substantive rights created by
14 the Constitution and Federal Statutes. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). To the
15 extent that Plaintiff is seeking to state a claim under Section 1983, she “must allege the violation of a
16 right secured by the Constitution and the laws of the United States, and must show that the alleged
17 deprivation was committed by a person acting under color of law.” *West v. Atkins*, 487 U.S. 42, 48-
18 49 (1988). A person acts under “color of law” if he “exercise[s] power possessed by virtue of state
19 law and made possible only because the wrongdoer is clothed with the authority of state law.” *West*,
20 487 U.S. at 49. Plaintiff has not included sufficient allegations to state a plausible claim that the
21 attorneys identified will be dismissed with leave to amend.

22 **III. Plaintiff’s Motion for Judicial Notice of Relevant State Court Documents**

23 Construing Plaintiff’s Motion for Request for Judicial Notice (ECF No. 25) liberally, it
24 appears that Plaintiff asks the Court to consider additional information for her Second Amended
25 Complaint, but it is not clear which causes of action the information is being directed at. As such,
26 Plaintiff may incorporate the material from the documents as factual allegations in a third amended
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1 complaint, should she choose to file one. The Court will therefore deny the motion for judicial
2 notice without prejudice.

3 **IV. Conclusion**

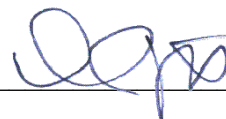
4 **IT IS THEREFORE ORDERED** that Plaintiff's third claim for discrimination, sixth claim for
5 defamation/slander, and seventh claim for civil rights violations are dismissed with leave to amend, for
6 failure to state a claim upon which relief can be granted. Plaintiff shall have thirty (30) days from the
7 date of this order to file an amended complaint adding only new factual allegations for **these three**
8 **claims**, if she believes she can assert facts or provide allegations that address the noted defects of the
9 complaint. Failure to file a timely amended complaint will result in a recommendation that these claims
10 be dismissed with prejudice.

11 **IT IS FURTHER ORDERED** that if Plaintiff chooses to file an amended complaint, the
12 amended complaint shall be complete in and of itself, without reference to the previous complaint, as
13 required by Local Rule 15-1. Plaintiff shall also title the amended complaint with the words, "THIRD
14 AMENDED COMPLAINT," on page one in the caption.

15 **IT IS FURTHER ORDERED** that the Clerk of Court must send Plaintiff a USM-285 form and
16 a proposed summons form, along with a copy of this order. Upon receipt, Plaintiff must complete both
17 forms with all required information and return them to the Clerk within thirty days. Upon receipt of the
18 completed USM-285 and proposed summons form, the Court will enter a further order for service upon
19 Defendants.

20 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Request for Judicial Notice (ECF No.
21 25) is **denied** without prejudice.

22 DATED: October 28, 2019.

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26 Daniel J. Albregts
27 United States Magistrate Judge
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